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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MARK RICHARDSON, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B166208 (Los Angeles County Super. Ct. No. BS070773)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Diane Marchant for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Katherine J. Hamilton, Assistant City Attorney, and Claudia McGee Henry, Senior Assistant City Attorney, for Defendants and Respondents.

* * * * * *

Appellant Mark Richardson appeals from a judgment entered after the trial court denied his petition for writ of mandate, in which he raised a statute of limitations defense for the first time. Respondents are the City of Los Angeles (the City) and Bernard Parks in his capacity as former chief of police of the City. We affirm.

CONTENTIONS

Appellant contends that: (1) the time provisions contained in the City Charter limit the City's jurisdiction; and (2) respondents acted in excess of their jurisdiction in imposing a nine-day suspension on appellant.

FACTS AND PROCEDURAL HISTORY

On February 23, 2000, the Los Angeles Police Department (the Department), discovered various acts of misconduct committed by Rafael Perez and other officers, including appellant. On September 18, 2000, the Department mailed to appellant a notice advising him that it was proposing to send him to a board of rights hearing to answer six counts of misconduct, all allegedly occurring on January 22, 1997. On September 22, 2000, the Department filed a personnel complaint with the Los Angeles Police Commission. An amended complaint was filed on April 18, 2001, alleging: "Count 1. On or about January 22, 1997, you, while on duty, knew or should have known that R. Perez falsely arrested M. Yanez. [¶] Count 2. On or about January 22, 1997, you, while on duty, conspired with other Department employees to falsely arrest J. Tse. [¶] Count 3. On or about January 22, 1997, you, while on duty, submitted a Probable Cause Determination report for M. Yanez that you knew or should have known contained inaccurate/false information."

The board of rights hearing commenced on April 18, 2001. The board of rights (the Board) retired for deliberations, then resumed the hearing requesting the Department to amend count 3 to read: "On or about January 22, 1997, you neglected your duty when

you submitted a probable cause determination report for M. Yanez prior to reviewing the related reports as required." The amended count was served on appellant.

Appellant declined the right to prepare a defense for the amended charge and to continue the hearing. Appellant pled guilty to the amended count. The Board found appellant not guilty as to count 1 and count 2, finding that Rafael Perez was not a credible witness as to those counts. The Board found appellant guilty of amended count 3.

After reviewing appellant's personnel file and hearing testimony from several witnesses, the Board recommended that appellant be suspended for nine days.

The chief of police adopted the Board's recommendation effective May 2, 2001.

On July 18, 2001, appellant filed a claim for damages with the City, alleging that he was wrongfully suspended by the chief of police. He also alleged that the chief of police acted in excess of his jurisdiction because he based appellant's nine-day suspension on conduct that was barred by the applicable statute of limitations. He further alleged that the suspension was based on conduct which was not misconduct and the penalty constituted an abuse of discretion. He also complained that the City and the Department deprived him of an opportunity for an administrative appeal.

Appellant filed a petition for writ of mandate on July 26, 2001, claiming, among other things, that under the City's Charter, respondents had no jurisdiction to suspend appellant because the personnel complaint (filed on September 22, 2000) had not been filed with the Commission within two years of the date of occurrence (January 22, 1997). On February 21, 2003, the trial court denied the petition for writ of mandate.

This appeal followed.

DISCUSSION

Appellant did not raise the statute of limitations defense in a timely manner

Interpretation of charter provisions raise pure questions of law which we resolve de novo. (*Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1350.) Appellant characterizes City Charter section 202(4), which sets forth limitation periods during

which a police officer may be punished, as a jurisdictional rather than as a statute of limitations issue. We conclude, however, that the limitations period is a statute of limitations, and that appellant waived the defense by failing to raise it at the administrative hearing.

City Charter section 202(4), in effect at the time of the misconduct, provides in pertinent part that an officer shall not be punished for conduct that was discovered by the Department and brought to the attention of the chief of police more than one year prior to the filing of the complaint against the officer or, for noncriminal misconduct, falls outside the limitations period of two years from the date of occurrence.[1]

In *Jackson,* Division Three of this district held that the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq., the Bill of Rights Act) establishes a one-year limitations period[2] which prevails over the one-year limitations period set forth in City Charter section 202(4). (*Jackson, supra,* 111 Cal.App.4th at p. 905.) The issue in that case, not pertinent here, was whether the limitations period begins when the matter is reported to the chief of police (as set forth in the City Charter) or upon discovery of misconduct by a person authorized to initiate an investigation of the allegation, such as a sergeant or detective (as set forth in the Bill of Rights Act). The court found that an administrative order issued by the chief of police on March 22, 1999, recognized the conflict between the Bill of Rights Act and City Charter section 202(4), and adopted the language of the Bill of Rights Act. In holding that the language of the Bill of Rights Act prevailed, the court stated that a general law seeking to accomplish an

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1 City Charter section 202(4) was superseded on July 1, 2000 by City Charter section 1070(c), which contained similar terms. (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 905, fn. 2. (*Jackson*).) City Charter section 1070(c) was modified substantially by an amendment that became effective on May 5, 2001. (*Jackson,* at p. 905, fn. 2.)

2 The one-year limitations period applies to misconduct occurring after January 1, 1998. (Gov. Code, § 3304, subd. (d).)

objective of statewide concern prevails over conflicting local regulations even if it impinges to a limited extent on local control. (*Jackson,* at pp. 905-908.)

What is important to this case is that Division Three recognized that both the City Charter and the Bill of Rights Act establish limitations provisions. The court noted that the Bill of Rights limitations period balances the public interest in maintaining the efficiency and integrity of the police force with the police officers' interest in receiving fair treatment by requiring the diligent prosecution of known claims. (*Jackson, supra,* 111 Cal.App.4th at p. 909.) Other than the difference in the requirement that the matter be brought to the police chief's attention, Division Three found that the limitations periods set forth in the Bill of Rights Act and City Charter section 202(4) were harmonious. (*Jackson, supra,* 111 Cal.App.4th at p. 910.)

We conclude, as recognized by Division Three, that the limitations period set forth in the City Charter at section 202(4) is a statute of limitations period. Since the statute of limitations is a personal defense and must be raised at the administrative hearing or it is waived, we conclude that appellant waived the defense. (*Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37; *Jenron Corp. v. Department of Social Services* (1997) 54 Cal.App.4th 1429, 1437.) Nor are we convinced by appellant's argument that since the present matter was not governed by the Administrative Procedure Act (Gov. Code, § 11500), which requires an officer to file an answer containing his defenses, the limitations period cannot be viewed as a statute of limitations.

In light of our conclusion, we need not address appellant's argument that respondents acted in excess of their jurisdiction. Nor need we consider respondents' argument that if appellant had presented the statute of limitations argument to the Board, it could have considered whether appellant's misconduct implicated conduct punishable as a felony.

DISPOSITION

The judgment is affirmed. Respondents shall receive costs of appeal.

NOT FOR PUBLICATION.

_____, J.

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We concur:

_____, P.J.

BOREN

_____, J.

ASHMANN-GERST